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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CURTIS AND CHARLOTTE WESTLEY,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

vs.

OCLARO, INC., et al.,

Defendants.

No. 3:11-cv-02448-EMC

CLASS ACTION

THE CONNECTICUT LABORERS'
PENSION FUND'S NOTICE OF MOTION
AND MOTION FOR APPOINTMENT AS
LEAD PLAINTIFF AND APPROVAL OF
SELECTION OF COUNSEL;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF

DATE: September 2, 2011

TIME: 1:30 p.m.

CTRM: 5

JUDGE: Hon. Edward M. Chen

NOTICE OF MOTION AND MOTION

TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD

PLEASE TAKE NOTICE that on Friday, September 2, 2011, at 1:30 p.m., or as soon thereafter as the matter may be heard in Courtroom 5 of the Honorable Edward M. Chen, the Connecticut Laborers' Pension Fund ("CT Laborers" or the "Fund") will and hereby does move this Court pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. §78u-4-1(a)(3)(B), for an order: (1) appointing the Fund as Lead Plaintiff; and (2) approving the Fund's selection of Robbins Geller Rudman & Dowd LLP ("Robbins Geller") as Lead Counsel for the class.

This Motion is made on the grounds that the Fund is the "most adequate plaintiff" to serve as lead plaintiff. In support of this Motion, the Fund submits herewith a Memorandum of Points and Authorities and the Declaration of Brian O. O'Mara ("O'Mara Decl.").

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF ISSUES TO BE DECIDED

This is a securities class action on behalf of all persons who purchased or otherwise acquired the common stock of Oclaro, Inc. ("Oclaro" or the "Company") between May 6, 2010 and October 27, 2010, inclusive (the "Class Period"), against Oclaro and certain of its officers and/or directors for violations of the Securities Exchange Act of 1934 (the "1934 Act").

According to the PSLRA, the Court is to appoint as lead plaintiff the member of the purported class with the largest financial interest in the relief sought by the class that otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure. 15 U.S.C. §78u-4(a)(3)(B). Here, CT Laborers should be appointed as lead plaintiff because it: (1) timely filed its motion for appointment as lead plaintiff; (2) has the largest financial interest in the outcome of this litigation of any movant of which it is aware; and (3) will adequately represent the interests of the class. *See* 15 U.S.C. §78u-4(a)(3)(B)(iii); *see also* O'Mara Decl., Ex. A.

In addition, CT Laborers' selection of Robbins Geller to serve as lead counsel should be approved because Robbins Geller possesses extensive experience in the prosecution of securities class actions and will adequately represent the interests of all class members.

II. SUMMARY OF THE ACTION

Oclaro is a leading provider of high-performance core optical network components, modules and subsystems to global telecom equipment manufacturers. Oclaro is the resulting company after the April 27, 2009 merger of Bookham, Inc. (“Bookham”) and Avanex Corporation (“Avanex”), with Bookham becoming the parent company and changing its name to Oclaro, Inc. upon the close of the merger. The Company purports to leverage proprietary core technologies and vertically integrated product development to provide its customers with cost-effective and innovative optical solutions in metro and long-haul network applications.

On May 6, 2010, the Company filed a Form 424(b)(5) Prospectus Supplement with the SEC for a secondary offering of 6.9 million shares (including the over-allotment) of the Company’s common stock to the public at a price of \$12.00 per share (the “Offering”). The May 6, 2010 Prospectus Supplement (the “Prospectus Supplement”) updated information in the Bookham Prospectus dated October 19, 2007, which was included in the October 17, 2007 Bookham shelf Registration Statement (Registration No. 333-145665) (the “Registration Statement”).

On May 12, 2010, Oclaro completed the Offering pursuant to the Prospectus Supplement. The Company netted proceeds of approximately \$77.2 million from the Offering after deducting underwriting discounts, commissions and estimated offering expenses.

During the Class Period, defendants issued materially false and misleading statements regarding the Company’s current business and financial condition, including projections for its first quarter 2011 and fiscal 2011 revenues, earnings and gross margins.¹ As a result of defendants’ false statements, Oclaro stock traded at artificially inflated prices during the Class Period, reaching a high of \$17.07 per share on October 17, 2010.

On October 28, 2010, before the market opened, Oclaro reported 1Q11 earnings per share of \$0.01 as compared to analyst estimates of \$0.22. The Company also posted sequential gross margin declines and reported that its anticipated second quarter 2011 revenues, earnings and gross

¹ Oclaro’s fiscal year ends in July.

1 margins, which it had previously indicated would post accelerated gains, would also be down, all as
 2 a result of sudden customer inventory corrections and weak demand visibility, among other things.
 3 On this news, Oclaro's stock price dropped 37% to close at \$8.60 per share on October 28, 2010,
 4 from a close of \$13.68 per share on October 27, 2010, on high volume.

5 The Registration Statement and Prospectus Supplement omitted the fact that as opposed to
 6 increased demand, demand for Oclaro products was either flat or declining.

7 In addition, the true facts, which were known by defendants but concealed from the investing
 8 public during the Class Period, were as follows:

9 (a) Demand for Oclaro's products, which have sales cycles of one year, was flat
 10 or declining well before October 28, 2010;

11 (b) The Company did not have a reasonable basis for its forecast of accelerated
 12 gross margin growth or that orders for Oclaro products would cover forecasted financial results; and

13 (c) Oclaro's capacity to meet forecasted revenues, earnings, and margin growth
 14 was severely compromised.

15 As a result of defendants' false statements, Oclaro's stock traded at inflated levels during the
 16 Class Period. However, after the above revelations seeped into the market, the Company's shares
 17 were hammered by massive sales, sending them down more than 49% from their Class Period high.

18 **III. ARGUMENT**

19 **A. CT Laborers Satisfies the PSLRA's Requirements and Should Be** 20 **Appointed Lead Plaintiff**

21 The PSLRA establishes the procedure for the appointment of a lead plaintiff in "each private
 22 action arising under [the 1934 Act] that is brought as a plaintiff class action pursuant to the Federal
 23 Rules of Civil Procedure." 15 U.S.C. §78u-4(a)(1); *see also* 15 U.S.C. §78u-4(a)(3)(B)(i). First, the
 24 pendency of the action must be publicized in a widely circulated national business-oriented
 25 publication or wire service not later than 20 days after filing of the first complaint. 15 U.S.C. §78u-
 26 4(a)(3)(A)(i). This notice shall advise members of the class of: (1) the pendency of the action; (2)
 27 the claims asserted therein; (3) the purported class period; and (4) the right to move the court to be
 28 appointed as lead plaintiff within 60 days of publication of the notice. Here, notice was published on

1 May 19, 2011, on *Business Wire* in connection with the filing of the first-filed action. *See* O’Mara
 2 Decl., Ex. B.

3 Next, the PSLRA provides that the court shall adopt a presumption that the most adequate
 4 plaintiff is the person or group of persons that –

5 (aa) has either filed the complaint or made a motion in response to a notice . . . ;

6 (bb) in the determination of the court, has the largest financial interest in the relief
 7 sought by the class; and

8 (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil
 Procedure.

9 15 U.S.C. §78u-4(a)(3)(B)(iii)(I); *see In re Cavanaugh*, 306 F.3d 726, 729-30 (9th Cir. 2002). The
 10 Fund meets each of these requirements and should therefore be appointed lead plaintiff.

11 **1. CT Laborers’s Motion Is Timely**

12 The Fund has timely filed this Motion within 60 days of the May 19, 2011 notice publication,
 13 and has also duly signed and filed a certification evidencing, among other things, its willingness to
 14 serve as a representative party on behalf of the class. *See* O’Mara Decl., Ex. B. Accordingly, the
 15 Fund has satisfied the individual requirements of 15 U.S.C. §78u-4(a)(3)(B) and is entitled to have
 16 its application for appointment as lead plaintiff considered by the Court.

17 **2. CT Laborers Possesses the Largest Financial Interest in the 18 Relief Sought by the Class**

19 According to 15 U.S.C. §78u-4(a)(3)(B)(iii), the Court shall appoint as lead plaintiff the
 20 movant or movants who have the largest financial interest in the relief sought by the action. *See*
 21 *Cavanaugh*, 306 F.3d at 732. As demonstrated herein, the Fund suffered a loss exceeding \$134,000
 22 from its purchase of Oclaro common stock. *See* O’Mara Decl., Ex. A. To the best of its knowledge,
 23 there are no other applicants who have sought, or are seeking, appointment as lead plaintiff that have
 24 a larger financial interest. Therefore, the Fund satisfies the PSLRA’s prerequisite of having “the
 25 largest financial interest in the relief sought by the class.” 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(cc).

3. CT Laborers Meets Federal Rule of Civil Procedure 23's Requirements

In addition to possessing a significant financial interest, a lead plaintiff must also “otherwise satisf[y] the requirements of Rule 23 of the Federal Rules of Civil Procedure.” 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(cc). Rule 23(a) generally requires that the claims of representative parties be typical of the claims of the class and that the representatives will fairly and adequately protect the interests of the class. *See* Fed. R. Civ. P. 23; *Cavanaugh*, 306 F.3d at 730. As detailed below, the Fund satisfies the typicality and adequacy requirements of Rule 23(a).

The test of typicality “‘is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.’” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (citation omitted); *see also In re Advanced Tissue Scis. Sec. Litig.*, 184 F.R.D. 346, 349 (S.D. Cal. 1998) (typicality requirement of Rule 23(a)(3) is satisfied when representative plaintiffs’ claims arise out of the same event or course of conduct as do the other class members’ claims, and are based on the same legal theories). The threshold typicality and commonality requirements are not high; Rule 23(a) requires only that resolution of the common questions affect all, or a substantial number of, class members. *Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 657 (C.D. Cal. 2000). The adequacy requirement is met if no conflicts exist between the representative and class interests and the representative’s attorneys are qualified, experienced and generally able to conduct the litigation. *Richardson v. TVIA, Inc.*, No. C-06-06304 RMW, 2007 U.S. Dist. LEXIS 28406, at *16 (N.D. Cal. Apr. 16, 2007) (citing Fed. R. Civ. P. 23(a)(4) and *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003)).

Here, the Fund meets the typicality and adequacy requirements because, like all other members of the purported class, it purchased Oclaro common stock at artificially inflated prices during the Class Period and suffered damages thereby. Because the Fund’s claims are premised on the same legal and remedial theories and are based on the same types of alleged misrepresentations and omissions as the class’s claims, typicality is satisfied. *See In re Surebeam Corp. Sec. Litig.*, No. 03-cv-1721 JM (POR), 2003 U.S. Dist. LEXIS 25022 (S.D. Cal. Jan. 5, 2004). Additionally, the

1 Fund is not subject to any unique defenses and there is no evidence of any conflicts between the
2 Fund and the other class members.

3 CT Laborers therefore satisfies the *prima facie* showing of the typicality and adequacy
4 requirements of Rule 23 for purposes of this Motion.

5 **B. This Court Should Approve CT Laborers’s Selection of Counsel**

6 The PSLRA vests authority in the lead plaintiff to select and retain lead counsel, subject to
7 this Court’s approval. *See* 15 U.S.C. §78u-4(a)(3)(B)(v). Courts should not disturb the lead
8 plaintiff’s choice of counsel unless it is necessary to “protect the interests of the class.” 15 U.S.C.
9 §78u-4(a)(3)(B)(iii)(II)(aa).

10 Here, CT Laborers has selected Robbins Geller as lead counsel for the class. Robbins Geller
11 has successfully prosecuted numerous securities fraud class actions on behalf of injured investors
12 and has been appointed as lead counsel in landmark class actions, including *In re Enron Corp., Sec.*
13 *Litig.*, 206 F.R.D. 427 (S.D. Tex. 2002). *See* O’Mara Decl., Ex. C. Thus, the Court may be assured
14 that in the event this Motion is granted, the members of the class will receive the highest caliber of
15 legal representation available from Robbins Geller as lead counsel. *Id.* Because the Fund has
16 selected and retained counsel experienced in litigating securities fraud class actions with the
17 resources to prosecute this action to the greatest recovery possible for the class, its choice of Robbins
18 Geller as lead counsel should be approved.

19 **IV. CONCLUSION**

20 For the foregoing reasons, the Connecticut Laborers’ Pension Fund respectfully requests that
21 the Court: (1) appoint it as Lead Plaintiff; and (2) approve its selection of Robbins Geller as Lead
22 Counsel for the class.

23 DATED: July 18, 2011

ROBBINS GELLER RUDMAN
& DOWD LLP
DARREN J. ROBBINS
BRIAN O. O’MARA

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/s BRIAN O. O’MARA
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CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2011, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 18, 2011.

s/ BRIAN O. O'MARA
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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

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